

SENATE JOINT RESOLUTION 788

By Campbell

A RESOLUTION to authorize the Speaker of the Senate to appoint a committee to meet with a like committee from the House of Representatives to consider the removal of Donna Scott Davenport from the office of Juvenile Court Judge of Rutherford County by the Tennessee General Assembly acting pursuant to Article VI, Section 6 of the Constitution of Tennessee.

WHEREAS, Article VI, Section 6 of the Constitution of Tennessee sets out a process by which the General Assembly may remove a judge of this State from office for cause by a concurrent two-thirds vote of both Houses of the General Assembly, each House voting separately; and

WHEREAS, Donna Scott Davenport is a duly elected Juvenile Court Judge for Rutherford County; and

WHEREAS, Judge Davenport has violated State law and her oath of office, the General Assembly finds it necessary to commence proceedings for the removal of Donna Scott Davenport from office as Juvenile Court Judge for the following cause:

From at least 2008 until 2017, Judge Davenport oversaw an illegal detention policy that was in use in Rutherford County, resulting in the unlawful detention of children, some of whom had not even been alleged to have committed a delinquent or unruly act; and

WHEREAS, the Tennessee Supreme Court has held in *McCully v. State*, 102 Tenn. 509 (1899) that Article VI, Section 6 of the Constitution of Tennessee guarantees Judge Davenport a right to be heard on the causes alleged for removal from office as Juvenile Court Judge of Rutherford County; and

WHEREAS, the Tennessee Supreme Court noted in *In re Murphy*, 726 S.W.2d 509 (Tenn. 1987) that a removal under Article VI, Section 6 of the Constitution of Tennessee could be affected after notice and hearing; and

WHEREAS, the Tennessee Attorney General and Reporter has opined that "an individual accepts a public office subject to any conditions placed on that office, including conditions for removal" (Tenn. Op. Att'y Gen. 90-27 (1990)) and an office is a species of property in which the officer has property rights as noted by the Tennessee Supreme Court in *State v. Blazer*, 619 S.W.2d 370 (Tenn.1981); and

WHEREAS, although a property right is defined by State law and State law permits removal from office for cause, the removal must be done in compliance with the constitutional mandates of due process (Tenn. Op. Att'y Gen. 93-21 (1993)), and the concept of due process is a flexible one which "calls for such procedural protections as the particular situation demands". *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976), quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); and

WHEREAS, in order to commence removal proceedings and provide Judge Davenport with procedural due process, the Speaker of the Senate shall appoint five members of the Senate to meet jointly with a like number of members of the House of Representatives to be appointed by the Speaker of the House of Representatives; and

WHEREAS, the joint committee shall have all powers conferred upon standing or select committees of the Senate by Tennessee Code Annotated, Title 3, including, but not limited to, the power to issue subpoenas, including subpoenas duces tecum, to enforce the attendance of witnesses and the production of any records, documents, papers, or other items of evidence; and

WHEREAS, the joint committee shall be convened by the member with the most continuous service at which time it shall elect such officers as are deemed appropriate; and

WHEREAS, the joint committee shall meet and consider the cause specified in this resolution, or consider additional causes not contained herein, and determine if the cause warrants a due process hearing on the removal of Judge Davenport; and

WHEREAS, if the joint committee determines a due process hearing is in order, it shall establish the rules and procedures to be utilized at the hearing, the parameters of the hearing, the date, time, and place of the hearing, and the extent, if any, to which witnesses will be heard and evidence received; and

WHEREAS, the joint committee shall provide Judge Davenport with written notice of the date, time, and place of any hearing at least ten days prior to the hearing; and

WHEREAS, at the conclusion of the hearing, if one is conducted, the joint committee shall vote "for recommending removal" or "against recommending removal" as to each cause presented against Judge Davenport at the hearing and the committee may vote "for recommending removal" based on the cumulative effect of all the causes presented even though they vote "against recommending removal" as to one or more of the individual causes; and

WHEREAS, within ten days from the date the committee has voted and concluded its hearing, the committee shall make and file its report with the respective speakers, who shall forthwith convene a joint convention of the General Assembly for the purpose of acting upon the report of the joint committee. Consideration before the joint convention shall be limited to the record; but oral argument will be permitted; and

WHEREAS, upon the conclusion of the argument, the joint convention shall adjourn and each House shall repair to its respective chamber, and vote separately, in the manner prescribed in Article VI, Section 6 of the Constitution of Tennessee. Each House shall vote "for" or "against" removal of Donna Scott Davenport as to each cause for which the joint committee recommended removal. Any member, by a motion properly seconded, may call for a vote of the

member's respective House on any cause considered by the joint committee but for which such committee recommended "against" removal. In the event two-thirds of the members to which one House may be entitled vote to remove Donna Scott Davenport for a cause which the joint committee recommended "against removal," the vote and the cause receiving such two-thirds vote shall be transmitted forthwith to the other House which shall then vote on it as if the cause was one recommended "for removal" by the joint committee; and

WHEREAS, if two-thirds of the members to which each House is entitled vote for removal on one or more of the causes alleged then Judge Davenport is removed from office and the votes shall be entered in the journals as required by Article VI, Section 6 of the Constitution of Tennessee; now, therefore,

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDRED TWELFTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE HOUSE OF REPRESENTATIVES CONCURRING, that the Speaker of the Senate shall appoint a committee of five members of the Senate to meet with a like number of members of the House of Representatives to be appointed by the Speaker of the House of Representatives to meet and determine if cause exists to conduct a hearing on the removal of Donna Scott Davenport from the position of Juvenile Court Judge of Rutherford County.

BE IT FURTHER RESOLVED, that the joint committee shall be convened by the member with the most continuous service at which time the committee shall elect such officers as are deemed appropriate.

BE IT FURTHER RESOLVED, that the joint committee shall have all powers conferred upon standing or select committees of the Senate by Tennessee Code Annotated, Title 3, including, but not limited to, the power to issue subpoenas, including subpoenas duces tecum, to enforce the attendance of witnesses and the production of any records, documents, papers, or other items of evidence.

BE IT FURTHER RESOLVED, that the joint committee shall meet and consider the causes specified in this resolution, or consider additional causes not contained herein, and determine if the causes warrant a due process hearing on the removal of Donna Scott Davenport as Juvenile Court Judge of Rutherford County.

BE IT FURTHER RESOLVED, that if the joint committee determines that a due process hearing is in order, the joint committee shall establish the rules and procedures to be utilized at the hearing; the parameters of the hearing; the date, time, and place of the hearing; and the extent, if any, to which witnesses will be heard and evidence received.

BE IT FURTHER RESOLVED, that the joint committee shall provide Judge Davenport with written notice of the date, time, and place of any hearing at least ten days prior to the hearing.

BE IT FURTHER RESOLVED, that at the conclusion of the hearing, if one is held, the joint committee shall vote "for recommending removal" or "against recommending removal" as to each cause presented against Judge Davenport at the hearing and the committee may vote "for recommending removal" based on the cumulative effect of all the causes presented even though they vote "against recommending removal" as to one or more of the individual causes.

BE IT FURTHER RESOLVED, that within ten days from the date the committee has voted and concluded its hearing, the committee shall make and file its report with the respective speakers.

BE IT FURTHER RESOLVED, that a signed and certified copy of this resolution be transmitted to Donna Scott Davenport ten days before the committee appointed pursuant to this resolution conducts a hearing to consider her removal from office as Juvenile Court Judge of Rutherford County pursuant to Article VI, Section 6 of the Constitution of Tennessee.

BE IT FURTHER RESOLVED, that this resolution serves as notice to Judge Davenport of the General Assembly's intention to remove her from the office of Juvenile Court Judge for

Rutherford County for cause; provided that if the joint committee appointed pursuant to this resolution determines it is necessary to consider any cause not contained herein, the joint committee shall provide Judge Davenport with notice of any additional cause not contained herein at least ten days before the committee conducts a hearing to consider her removal from office as Juvenile Court Judge of Rutherford County pursuant to Article VI, Section 6 of the Constitution of Tennessee.